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No. 922

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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O. S. HARPER, *Petitioner*,

v.

THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI AND BRIEF AND ARGUMENT IN SUPPORT THEREOF

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THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI

May It Please the Court:

The petition of O. S. Harper respectfully shows to this Honorable Court:

A.

Summary of the Matter Involved

This suit was instituted by the State of Texas in the District Court of Dimmit County, Texas, against O. S. Harper, petitioner, to recover state, county and school ad valorem taxes, allegedly due on

"2202 Plain Mexican Steers, Bulls and Stags"

owned by O. S. Harper and located in Dimmit County, Texas, on January 1, 1942, the determinative date for ad valorem tax purposes (Stipulation, R.).

The cattle had been imported, in bond, from Mexico, upon several dates, the first being October 31, 1941, and the last January 20, 1942 (R. 7). Upon April 15 and 17, 1942, same were shipped to Kansas, still in bond, where the duties were paid.

Upon the introduction of said cattle into Texas they were forthwith taken, in bonded trucks, to two pastures in Dimmit County, about 40 miles distant, which had been declared "bonded warehouses" by the Secretary of the Treasury (R. 146A, 147). The Dimmit County pastures were enclosed by three, four and five wire fences (R. 45), the gates were locked with the keys in the custody of a customs agent, and each pasture was identified by signs reading "U. S. Government Warehouse" (R. 20).

Petitioner denied liability for the taxes and defended upon the proposition that upon January 1, 1942, the determinative date for ad valorem tax purposes, the cattle were secured within inclosed bonded warehouses under Sections 1555-6, Title 19, U.S.C.A. and the Regulations of the Treasury Department promulgated thereunder; that said cattle were "imports" within the meaning of Section 10, Article 1, CONSTITUTION OF THE UNITED STATES, and hence, were exempt from taxation by the state or any other local taxing units (Stipulation, R.).

The District Court heard the matter and filed findings of fact and conclusions of law to the effect that:

(a) While said cattle remained in the custody of customs officials, duties remaining unpaid, not having been commingled with the general mass of property of the state, they were not subject to taxation by it;

(b) The Regulations of the Secretary of the Treasury under which said pastures had been bonded, were valid;

(c) Said cattle were confined so as to prevent commingling (R. 16).

Judgment was for petitioner which upon appeal by the state to the Court of Civil Appeals, Fourth Supreme Judicial District of Texas, sitting at San Antonio, Texas, was reversed and rendered, May 16, 1945, STATE v. HARPER, 188 S.W. (2d) 400. Motion for rehearing being timely filed and overruled, petitioner applied to the Supreme Court of the State of Texas for writ of error (R. 161), which application and the motion for rehearing which followed it, were denied without opinion nor notation (R. 176).

B.

Reasons Relied Upon for the Allowance of the Writ

1. The decision of the Court of Civil Appeals subjecting to state taxation cattle restrained in pastures that had been designated bonded warehouses by the Secretary of the Treasury, violates and conflicts with Art. 940, T. D. 1937, which provides:

> **"Imported goods in bonded warehouse are exempt from taxation under the general laws of the several states."**

2. Said decision violates and conflicts with Section 10, Article 1 of the CONSTITUTION OF THE UNITED STATES in that it requires petitioner to pay ad valorem taxes upon "imports."

3. Said decision violates and conflicts with Articles 1555-

6-7, Title 19, U. S. C. A., in denying petitioner facilities of bonded warehouses designated by the Treasury Department.

4. Said decision overturns a fact finding by the trial court based on ample evidence that Harper cattle were confined and not commingled.

5. Said decision violates and conflicts with Articles 1555-6-7, Title 19, U. S. C. A., in precluding petitioner from warehousing cattle in pastures designated as "bonded warehouses" by the Secretary of the Treasury and discriminates against cattle.

6. Said decision is squarely in conflict with Section 19.1, CUSTOMS REGULATIONS OF 1937, and with T. D. 50974, in this: It precludes the Secretary of the Treasury from designating pastures as bonded warehouses for cattle because cattle ate the contents of said pastures such as brush, burned pear and grass.

Section 19.1, T. D. 50974, provides:

> "Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; STABLES, FEEDING PENS, CORRALS * * * FOR THE STORAGE OF IMPORTED ANIMALS."

7. Said decision conflicts with Treasury Decision No. 50974, filed with the Federal Register, Dec. 1, 1943, FEDERAL REGISTER SERVICE No. 2118, in precluding cattle importers from the benefits of Art. 1555, Title 19, U. S. C. A., and of bonded warehouses, said Treasury Decision expressly recognizing cattlemens' rights in bonded pastures.

8. Said decision violates and conflicts with Article 1555, Title 19, U. S. C. A., in this: The quoted article provides:

> "Buildings or parts of buildings and other inclosures

may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise * * * ."

Said decision declares:

" * * * it occurs to us that the fact that the cattle were running on the range, sustaining themselves from the substance of the land in the same manner as other cattle in the county * * * exempt from local taxes for a period of three years it would be a simple matter to deprive these counties of all this revenue. * * * Under such circumstances we cannot agree that they were simply merchandise, stored in a 'bonded warehouse'." STATE v. HARPER, 188 S.W. (2d) 403.

9. Said decision violates Art. 919, TREASURY REGULATIONS OF 1937, in that the court attempts to usurp the prerogative of the Secretary of the Treasury in fixing the character and dimensions of pastures as bonded warehouses for imported cattle.

10. The Court of Civil Appeals decided this case in a way probably in conflict with applicable decisions of this Court, to wit:

(a) In GOLDRICK v. GULF OIL CORP., 309 U.S. 414, this court held that fuel oil, manufactured in a bonded warehouse and free of duty is not subject to a sales tax under state law in view of congressional policy. (This decision has been published for the information of customs officers.)

(b) In LOW v. AUSTIN, 13 Wall. 20-35, this Court held that while imported goods retain their character as imports, tax upon them, in any shape, is unconstitutional and beyond the power of a state.

11. The Court of Civil Appeals has decided an important question of Federal law which has not been, but should be,

settled by this Court, to wit: Can a state court nullify the designation by the Secretary of the Treasury of a bonded warehouse for imported cattle?

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Civil Appeals, Fourth Supreme Judicial District of Texas, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 11495, The State of Texas, Appellant, v. O. S. Harper, Appellee, and that the said judgment of the Court of Civil Appeals may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises, as to this Honorable Court may seem mete and just; and your petitioners will ever pray.

DAVID E. HUME,
Counsel for Petitioner